* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 349/2005

Reserved on : 15.5.2007
Pronounced on : 21.5.2007

KAMLESH ..... Petitioner
Through: Mr. S.M.Pandey and Ms Ramawati, Advocates.

versus

STATE & others ..... Respondents
Through Mr. V.K.Malik, APP for State
Shri. N.K. Sharma, Advocates.

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr.Justice S. Ravindra Bhat :

1. This revision petition challenges an order of acquittal, by the Additional Sessions Judge, under Section 304, Indian Penal Code, dated 8-2-2005.

2. According to the prosecution, one Deepak @ Deepu was arrested by the Sarojini Nagar police for offences punishable under the Arms Act; First Information Report (FIR) being No. 364 of 96 was registered against him on 25.8.1996. It was alleged that on 29.8.1996, Deepak was taken to Safdarjung hospital for X-ray. He was taken to the

hospital from Patiala House Courts in the custody of HC Girish Prasad, respondent No.2 and the respondent No.3, another policeman.

3. Deepak escaped from the custody of police i.e. respondent No. 2 and 3 and could not be traced. Case FIR No. 374 of 1996 was accordingly registered against him under Section 224 I.P.C. and a police search party was involved in searching him. On 30.8.1996, at 4.20 AM, information was received at Police Station Sarojini Nagar that the body of an unknown person had been left by some one in the casualty ward of Safdarjung hospital. S.I. Rajender Pal was sent to the hospital. Soon thereafter, Smt. Kamlesh Kumar, Addl. S.H.O. P.S. Sarojini Nagar too reached there. She inspected the dead body and conducted enquiry and came to know that the dead body was of Sonu, the brother of Deepak who had earlier escaped from police custody. She suspected that Sonu's body had been left in Safdarjung hospital by the staff from her police station. She, accordingly sent a written report, (ruqua) to the police station Sarojini Nagar leading to lodging of FIR No. 375 of 1996 under Sections 304/34 IPC.

4. During investigation of the case, it was found that respondents No.2 to 9 had gone to Deepak's house, at D-58, Chanakaya Place and had brought Sonu, the deceased and brother of escaped Deepak. This had been witnessed by Arvind Kumar, Smt. Geeta and Km. Rsoopa, the father, wife and sister of Sonu. The respondents allegedly subjected Sonu to interrogation and heavy beating to find out the where-abouts of Deepak as a result of which he expired and on his death, his body was left in the Safdarjung hospital.

5. That the respondent accused were arrested and put to Test Identification parade where 14 witnesses were produced to identify them as the accused responsible for the

death of Sonu. However, no witness could identify them. After the failure of the T.I.P. as against respondent No.3, and after the case was transferred to Crime Branch for further investigation, on 14.3.97, i.e. after 7 months of the incident, when the respondents were on bail, respondent No.3 was shown to have been called in the office of Crime Branch, Adarsh Nagar, Delhi where, three main witnesses namely Arvind Kumar, Smt. Geeta and Km. Roopa, the father, wife and sister of the deceased were present. The three witnesses allegedly identified the third respondent in the presence of the Investigating Officer in the Crime Branch Office as one among the person who had arrested Sonu from his house on 29.8.1996. On the basis of the facts and evidence, the respondent accused were charge-sheeted; the order on charge was made on 9.1.2001; to which they pleaded not guilty.

6. During trial which commenced with the framing of charge on 9.1.2001 till 8.2.2005 when statements under Section 313 Cr.P.C. were dispensed with for the want of evidence and judgment of acquittal was pronounced, the prosecution examined 18 witnesses.

7. The revision petition is preferred by the mother of deceased Sonu; the State chose not to prefer an application for leave to appeal. It is contended that the trial court fell into error, in recording acquittal, since there was sufficient material, and evidence to convict the accused, in the form of eyewitness testimony. Learned counsel submitted that the evidence of the sister and wife of the deceased showed that the police had taken the deceased into custody, and he was later found dead. This, coupled with circumstantial evidence of his maltreatment, pointed to custodial death, at the hands of the accused, who tried to cover up the entire incident, by cooking up a story.

8. Counsel took me through the evidence to say that the trial court was unduly influenced by the discrepancies in testimony of the witnesses, who were admittedly deposing 8 years after the incident. The court should have ignored those minor variations and contradictions, and seen that the version put forward by the prosecution stood established. These were sufficient to record conviction of the accused.

9. It was also contended that the failure to identify the accused during the trial could not have falsified the prosecution case, or led to its being disbelieved. Counsel contended that the evidence overwhelmingly pointed to the respondent's complicity. The nature of injuries, which were extensive, and 51 in number, and which cumulatively resulted in death of Sonu, and circumstances, pointed to his being detained by policemen, who had visited his home in plainclothes. All these established strong and irrefutable circumstances about the accused's presence, and involvement. Counsel relied on the trail court record, which was summoned in these revisional proceedings.

10. The petition was opposed by counsel for the accused, who stated that apart from the so-called identification of Head Constable Girija Prasad, Respondent-3, on 14-3-1997, much after the incident, and in a police station, where no one else was present, there were no circumstance to link the accused with the incident. It was urged that no witness could identify any accused during the trial, and they did not even support the statements said to have been recorded during investigation.

11. The trial court in this case recorded the deposition of 18 witnesses, including the depositions of the father of deceased, i.e Arvind, his sister, Rupa (PW-5); Geeta (PW-17) Raju (PW-10) and independent witnesses, said to have been present at the spot, when the

deceased was arrested and taken away by 12 policemen, in a van. Each of the witnesses had deposed in inquest proceedings; they had categorically mentioned the circumstances under which the deceased had been taken away. However, two important features merit consideration. One, in the Test Identification Parade, none of the accused could be identified. Two, none of the eyewitnesses supported their earlier versions; they even could not identify the accused, during the trial. It is no doubt true that the trial took place after a considerable delay. Yet, in the absence of any connecting link between the accused and the incident, or anything suggestive of their being instrumental in detaining the deceased, it would be hazardous for the court to presume their involvement. The nature of injuries on the person of the deceased, i.e 51 abrasions and burn marks, which led to medical opinion that death occurred due to cumulative effect of the injuries, and on account of shock, may perhaps raise suspicion about involvement of policemen; this is supported by the general thread of allegations levelled during investigations, and in the inquest. Yet, having regard to the standard of proof in criminal cases, where the prosecution is duty bound to establish beyond reasonable doubt that the accused committed the offence, the court could not have, on the existing materials, recorded a conviction. Suspicion, however strong, cannot translate its proof unless convincing materials and cogent corroboration, worthy of credence, are disclosed during the trial.

12. As far as the petitioner's grievance is concerned, being the mother, her anguish is understandable. Yet, the records show that she was not an eyewitnesses; the prosecution did not cite her as such. Moreover during inquest, it transpired that she was in police custody till 3-9-1996 at 9:00 PM. Suspicion, howsoever strong, can not translate into

proof unless convincing materials and cogent corroboration, worthy of credence, are disclosed during the trial.

13. It is well established that in revisional jurisdiction, the High Court can interfere with a finding or acquittal or conviction only if it is satisfied that on the materials existing on the record, the approach or proceedings of the trial court were either without jurisdiction, or were illegal, or were so erroneous that injustice resulted. Even in the event of such conclusion, the court cannot reverse an order recording acquittal. It can remit the case for reconsideration. Having regard to this limited jurisdiction, and after having carefully examined the trial court record, as well as considered the contentions of parties, I am satisfied that it would not be appropriate to interfere with the findings of the trial court, or disturb the order of acquittal.

14. In view of the above findings, this petition has to fail; it is therefore dismissed.

DATED: 21 May, 2007

(S. RAVINDRA BHAT)
JUDGE